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OFFICE OF PETITIONS

In re Application of :
John Wilkes. :
Application No. 09/927,163 : ON PETITION
Filed: August 9, 2001 :
Attorney Docket No. 10006371-1 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed November 5, 2007, and in duplicate on November 8, 2007.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is granted.

This application was held abandoned on May 8, 2007, after it was believed that no response was received to the final Office action mailed February 7, 2007. The notice allowed a shortened statutory period for reply of three (3) months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A Notice of Abandonment was mailed on October 10, 2007, indicating that a reply to the final Office action was not received.

The instant petition maintains that the response to final Office action was timely filed in the form of a Notice of Appeal filed July 12, 2007. The petition is accompanied by a copy of the Notice of Appeal with a certificate of mailing dated July 9, 2007, a copy of the Office date-stamped postcard whereby the Office acknowledged receiving the Notice of Appeal on July 12, 2007. The application file history reveals that a payment for a request for an extension of time within the second month was received on July 12, 2007.

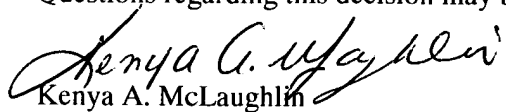
Based on the aforementioned, it appears that the application was improperly held abandoned as a proper response to the final Office action was received prior to expiration of the maximum statutory period for reply. The holding of abandonment is withdrawn, accordingly.

It is noted that deposit account 08-2025 was charged twice for extensions of time within the second month, but the payments were also received via check. Deposit account 08-2025 will be refunded \$450.00 and \$460.00, accordingly.

The application file is being forwarded to Technology Center 2100, GAU 2162 for further processing, including review of the appeal brief filed November 8, 2007.¹

¹ The appeal brief is timely received based on the Notice of Appeal and extension of time within the second month being received on July 12, 2007, and the extendable period for filing an appeal brief running from the date the Notice of Appeal is filed. The appeal brief filed November 8, 2007, is timely with an extension of time within the second month.

Questions regarding this decision may be directed to the undersigned at (571) 272-3222.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions